

SENATE BILL REPORT

SB 5272

As Amended by House, April 21, 2007

Title: An act relating to the administration of fuel taxes.

Brief Description: Modifying the administration of fuel taxes.

Sponsors: Senators Haugen and Sheldon; by request of Department of Licensing.

Brief History:

Committee Activity: Transportation: 1/24/07, 2/5/07 [DP, DNP].

Passed Senate: 3/06/07, 34-14.

SENATE COMMITTEE ON TRANSPORTATION

Majority Report: Do pass.

Signed by Senators Haugen, Chair; Marr, Vice Chair; Murray, Vice Chair; Swecker, Ranking Minority Member; Berkey, Eide, Jacobsen, Kauffman, Kilmer, Sheldon and Spanel.

Minority Report: Do not pass.

Signed by Senators Clements, Delvin and Holmquist.

Staff: David Ward (786-7341)

Background: Washington's fuel tax statutes declare that motor vehicle and special fuel taxes are imposed on the end user. Statute also directs fuel taxes be collected at the time the fuel is removed from the terminal rack, with those in the chain of distribution above the retailer being allowed certain credits and required to keep records showing the tax has been passed down the distribution chain. However, retailers are not allowed those same credits, and are not required to pass on the tax to the consumer, or required to show receipts indicating the tax has been paid. Also, there is no enforcement at the user level for motor vehicle fuels to determine if the tax was paid by the end user.

Under federal law, absent explicit Congressional authorization, states are prohibited from imposing taxes on a tribe or its members for sales made on tribal lands. On January 4, 2006, the U.S. District Court for the Western District of Washington entered an order in favor of two plaintiff tribes, the Squaxin and Swinomish, declaring that the legal incidence of Washington's motor vehicle fuel tax is on the retailer. The order states that Washington's motor vehicle fuel taxes may not be applied to motor vehicle fuels delivered to, received by, or sold by any retail fuel station that is owned by a tribe, tribal enterprise, or tribal member and located on tribal lands. Because the court found that the Squaxin and Swinomish meet the above criteria, the

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court entered an injunction against the collection of Washington's motor vehicle fuel taxes for fuels delivered to, received by, or sold by the plaintiffs' retail stations.

In June 2006, the Department of Licensing and the two plaintiff tribes signed short-term intergovernmental agreements that are structured so the tribes charge their customers a fuel tax equivalent to the state motor vehicle fuel tax, with the tribes receiving 75 percent of the tax revenue collected and the state receiving 25 percent.

Summary of Bill: Current statutory language declaring that motor vehicle and special fuel taxes are imposed on the end user are eliminated from state motor vehicle and special fuel tax statutes. References to retailers, as well as refunds and credits available to, or tax liability of, licensed fuel distributors are also removed. Amendatory language is included to define licensees as fuel suppliers, importers, exporters, blenders, or international fuel tax agreement (IFTA) license holders, and explicitly states that the incidence of taxation be borne exclusively by these entities.

New sections are added to the motor fuel and special fuel tax chapters authorizing the Governor (or the Department of Licensing as their designee) to enter into fuel tax compact agreements with federally recognized tribes operating or licensing retail stations on reservation or trust lands. Existing state/tribal fuel tax agreements are unaffected by the legislation. Any future compact agreement requires the tribal entity to: (1) acquire fuel only from lawful entities; (2) spend fuel tax proceeds, or equivalent amounts, only on transportation planning, construction and maintenance of roads, bridges, boat ramps, transit services and facilities, police service and other highway-related purposes; and (3) allow for audits or other means of ensuring compliance to certify the number of gallons of fuel purchased for resale by the tribe and the use of fuel tax proceeds. Information from the tribal entity provided to the state is deemed personal information and exempt from public inspection or copying. The Department of Licensing is required to prepare and submit an annual report to the Legislature on the status of existing compact agreements and ongoing negotiations with the tribes. New sections are also added to the motor fuel and special fuel tax chapters requiring tribal licensees and retailers pass the tax through to end users as part of the selling price.

Various administrative changes are also addressed including: moving the racing fuel exemption from the special fuels to the motor fuels chapter; inserting IFTA provisions; and moving compliance language to more appropriate subsections of the two fuel tax chapters.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

Effective Date: The bill contains an emergency clause and takes effect immediately.

Staff Summary of Public Testimony: PRO: The decision to explicitly place the incidence of taxation at the supplier level was based on the belief that it is the most legally defensible option, harms the least number of interests, and offers the greatest level of protection against future litigation with regard to state fuel tax revenues. An important policy issue addressed by the bill is the state regulation of payment due dates within the industry, which is also eliminated in the bill. In general the tribes are supportive of the compact process and are

committed to the spending provisions constraining the use of funds for transportation purposes including policing activities. It is important that the tribes have access to funding for transportation infrastructure that can and will be used in partnership with local and state transportation projects.

CON: Distributors agree the issue needs to be addressed but believes a bill that does not eliminate the credits for distributors would also solve the problem. The state could keep the tax at the rack and impose the tax on distributors as a first possession tax upon removal from the rack. The Potowatami case in Kansas demonstrates that the float can be kept intact without jeopardizing the state's ability to tax the sale of fuel. Distributors' cash flow is negatively impacted and that inability to offer credit downstream to farmers, contractors, and retailers will hurt small businesses. The elimination of the float doesn't benefit the state but rather benefits suppliers whose payment due date to the state remains unchanged. The distributors in many cases will be required to borrow money and pay interest on the loans to replace the float the distributors will lose.

Persons Testifying: PRO: Sharon Whitehead, Department of Licensing; Kelly Croman, Squaxin Island Tribe; Marty Loesch, Swinomish Tribe; Katherine Iyall Vasquez, Cowlitz Indian Tribe; Scott Wheat, Spokane Tribe of Indians.

CON: Charlie Brown, Washington Oil Marketers Association; Lea Wilson, Broadway Fuel; Gerry Ramm, Inland Oil Company; Dan Averill, Reisner Petroleum; Tim Hamilton, Automotive United Trades Organization.

House Amendment(s): Fuel distributors are added to the definition of a licensee for purposes of fuel tax administration. However, the incidence of taxation is placed on all licensees except for distributors. As licensees, fuel distributors are eligible to retain interest earned on state fuel tax receipts held in trust prior to payment to the state. Also, the emergency clause is restored.